United Nations A/HRC/37/NGO/183

General Assembly

Distr.: General
28 February 2018

English only

Human Rights Council
Thirty-seventh session
26 February-23 March 2018
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[23 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.18-03110(E)

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STATES MUST UNEQUIVOCALLY ANCHOR THEIR HOUSING STRATEGIES IN HUMAN RIGHTS

Amnesty International welcomes the report by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (hereafter the Special Rapporteur), on human rights-based housing strategies. The report provides States and other actors with practical guidance on implementing effective housing strategies that are compliant with their human rights obligations.

Among the key principles on human rights-based housing strategies, the Special Rapporteur highlights that the right to housing should be recognized within housing strategies as a legal right, subject to effective remedies.1

Legal Security of Tenure

Amnesty International calls for human rights-based housing strategies to put in place a legal framework that guarantees, at the very least, a minimum degree of security of tenure in order to protect people from forced evictions, harassment and threats. As the Special Rapporteur notes, guaranteeing security of tenure should involve strengthening diverse forms of tenure including rental, informal, individual, and collective.2 Recent jurisprudence on Spain by the Committee on Economic, Social and Cultural Rights has confirmed positive obligations of the state to protect the right to housing including in private tenancy arrangements and even where the eviction is justified.3

Amnesty International has consistently called for the provision of security of tenure, in-situ. Only in exceptional circumstances and after genuine consultation with affected people and application of other safeguards should eviction and resettlement be considered as an option for achieving security of tenure.

However, Amnesty International has found that States have done little to meet their immediate obligation of providing security of tenure and in some cases made it very difficult for people to obtain it. For example, in Lagos, Nigeria, security of tenure remains elusive to the vast majority of the estimated 70% of people in Lagos living in slums or informal settlements. Lagos State land law experts have told Amnesty International that the process of obtaining a minimum degree of security of tenure is cumbersome, lengthy, fraught with corruption and too costly for the urban poor.[4]

Forced Evictions

The Special Rapporteur's guidance on human rights-based housing strategies also states that preventing and halting forced evictions must be considered an immediate and prioritized obligation. Amnesty International welcomes this statement. The organization has documented forced evictions in both developing and developed countries.[5] Regardless of where these occur, it is often some of the most disadvantaged individuals and groups who are forcibly evicted.

For example, Amnesty International has documented forced evictions that the Kenya Forest Service (KFS) has been

1 UN.Doc, A/HRC/37/53, 15 January 2018, available at http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/37/53&Lang=E, p. 16.

2 UN.Doc, A/HRC/37/53, 15 January 2018, available at http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/37/53&Lang=E, para 49 p. 9.

3 See ESCR-Net 'CESCR confirms right to housing applies to private tenancy arrangements', June 2017 https://www.escr-net.org/caselaw/2017/cescr-confirms-right-housing-applies-private-tenancy-arrangements

4 For details, see Amnesty International, 'The Human Cost of a Mega City: Forced Evictions of the Urban Poor in Lagos, Nigeria', 2017 Index number: AFR 44/7389/2017.

5 Amnesty International has documented cases of forced evictions in several countries including in Afghanistan, Angola, Brazil, Cambodia, Chad, China, Egypt, France, Ghana, Haiti, Italy, Kenya, Nigeria, Romania, Serbia and Zimbabwe.

carrying out against the Sengwer Indigenous community in Embobut forest in Kenya. The most recent wave of forced evictions started on 29 December 2017 and according to reports, is still ongoing. The KFS has carried out the forced evictions despite a court injunction of 2013 (renewed on several occasions thereafter) that forbids the eviction or arrest of Sengwer who are resident in the forest, pending the hearing of a petition claiming recognition of the community's constitutional right to land and a halt to evictions. 6

Leaving No One Behind

The Special Rapporteur in her report calls on States to ensure that housing strategies should identify groups that suffer housing disadvantages and should address the particular barriers they face.7 In order to achieve this, and in line with the principle, 'leaving no one behind', in the Sustainable Development Goals, Amnesty International advocates for national and local governments to ensure that housing strategies, plans and policies guarantee genuine participation, and equality and non-discrimination in all phases of planning and implementation. Therefore housing strategies must seek out and commit to reach the most disadvantaged first, including people living in poverty, social, religious, ethnic and sexual minorities, persons with disabilities, people living with HIV/AIDS, older persons, Indigenous peoples, refugees and internally displaced persons and migrants. In most contexts, women, youth and children also rank among the disadvantaged sections of society. They should also include the collection of disaggregated data, and setting and monitoring of indicators and benchmarks.

Amnesty International has found that through acts of commission and omission, governments often fail to ensure that their policies related to housing are accessible to those who are most vulnerable to human rights violations.

For example, in Rome, Italy, Amnesty International found that Roma living in camps are effectively excluded from social housing. Despite their numerous and repeated applications, only a handful of Romani families were recorded as living in some of the 50,000 social housing properties. The prioritization of criteria, within the social housing allocation system, meant that the Roma were effectively barred from equal access to social housing. Amnesty International's recommendations to the Italian authorities included ensuring effective access to social housing by all, including Roma, and that the allocation of social housing is based on need and on principles of non-discrimination, fairness, transparency, accountability and participation.[8]

Access to Essential Services

Amnesty International supports the Special Rapporteur's statement that rights-based housing strategies must ensure that all dimensions of the right to adequate housing are addressed in diverse contexts and each aspect of the adequacy of housing as articulated by the Committee on Economic, Social and Cultural Rights in General Comment 4 carried with it a specific obligation.9

However, Amnesty International has documented in several countries across the world where governments have failed to fulfil these obligations. In Slovenia, continuing discrimination against the Romani people condemned many of them to live in housing without essential services.10 Some municipalities had refused to provide public services to Roma because their settlements are 'irregular' - despite the fact that families have been living there for decades. As a result, some Roma had to travel long distances with jerry cans to get water from petrol stations, cemeteries or polluted streams.

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6 See further, https://www.amnesty.org/en/documents/afr32/7868/2018/en/, http://www.ohchr.org.EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22584 and https://eeas.europa.eu/delegations/kenya/38343/eu-suspends-its-support-water-towers-view-reported-human-rights-abuses_en

7 UN.Doc, A/HRC/37/53, 15 January 2018, available at http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/37/53&Lang=E, para 36 p. 7.

8 For details, see Amnesty International, 'Double Standards: Italy's Housing Policies Discriminate Against Roma' 2013, Index number: EUR 30/008/2013.

9 UN.Doc, A/HRC/37/53, 15 January 2018, available at http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/37/53&Lang=E, para 48.

10 For details, see Amnesty International, 'Parallel Lives: Roma Denied Access to Rights to Housing and Water', 2011, Index number: EUR 68/005/2011.

Amnesty International called on the government of Slovenia to allocate additional and adequate resources to municipalities to support them in regularizing informal settlements, and providing access to services and infrastructure within settlements. In November 2016, Slovenia amended its constitution to guarantee the right to water to all. While this is certainly a welcome development, the extent of its implementation vis-à-vis Roma communities remains to be seen.[11]

Addressing Homelessness

The Special Rapporteur further highlights that housing strategies must eliminate homelessness. A State is seen to be in violation of international human rights law if any significant portion of the population is deprived of access to basic shelter or housing. Addressing homelessness is therefore an immediate obligation.12 Amnesty International has found that instead of tackling the root causes of homelessness, governments around the world are increasingly targeting homeless people with criminal laws and regulations. For example, in Brazil children and adolescents living on the streets are often rounded up and forced into institutions. The dismantling of social programmes, low availability of services and infrastructure dedicated to this age group, and the failure of public officials to follow due process, has led to a further violation of the rights of children in street situations.

Recommendations

Amnesty International calls on the Human Rights Council to urge States to ensure that they anchor their housing strategies in human rights and use the principles and check list prepared by the Special Rapporteur to uphold their commitments in the context of the Sustainable Development Goals and the New Urban Agenda.

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11 See Amnesty International, 'Constitutional right to water "must flow down to" Roma communities' 17 November 2016

12 UN Doc. A/HRC/37/53, 15 January 2018, available at http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/37/53&Lang=E, para 18 p.5.